



DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

7 CFR PART 1208

[Document Number AMS-SC-18-0093]

**Processed Raspberry Promotion, Research, and Information Order;
Termination of Assessments**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule removes the requirement in the Processed Raspberry Promotion, Research, and Information Order (Order) that each eligible producer of raspberries for processing and eligible importer of processed raspberries pay to the National Processed Raspberry Council (Council) an assessment in the amount of one cent per pound as specified in the Order. The remaining provisions of the Order and regulations issued thereunder will be terminated at a later date. This action is necessary because termination of the Order was favored by a majority of the eligible producers and eligible importers voting in a referendum conducted from September 10 through October 5, 2018.

DATES: Effective date: [INSERT DATE ONE DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Hakim Fobia, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue, SW, Room 1406-S, Stop 0244, Washington, D.C. 20250-0244, telephone: (202) 720-9915; (202) 720-4835; facsimile: (202) 205-2800; or electronic mail: Hakim.Fobia@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

This final rule affecting 7 CFR part 1208 is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425). The Processed Raspberry Promotion, Research, and Information Order is codified at 7 CFR part 1208.

Prior documents in this proceeding: Continuance Referendum, July 25, 2018 [83 FR 35153]; Processed Raspberry Promotion, Research, and Information Order, May 8, 2012 [77 FR 26911]; and Referendum Procedures, February 8, 2010 [75 FR 6089].

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive

impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This final rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this rule will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12988

In addition, this final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended

to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C 7423) provides that it shall not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This final rule terminates Order requirements to pay an assessment as prescribed in § 1208.52 of the Order and section 517 of the 1996 Act. The 1996 Act authorizes a national processed raspberry promotion, research, and information program. In accordance with the 1996 Act, USDA developed and implemented the Order (7 CFR 1208.1 - 1208.520), which became effective on May 9, 2012.

Section 518 (c) of the 1996 Act (7 U.S.C. 7417(c)), and section 1208.71 (b) of the Order provide that the Secretary of Agriculture (Secretary) shall conduct a subsequent referendum among people subject to assessments. The Order states that subsequent referenda will be held every 7 years to determine whether producers of raspberries for processing and importers of processed raspberries favor continuance of the Order. A referendum also may be held by request of 10 percent or more of eligible voters, by request of the council established by the order, or when the Secretary deems it necessary. The Order shall continue if it is favored by a majority of producers and importers voting in the referendum, who during a representative period, have been engaged in the production or importation of processed raspberries.

In March 2018, USDA received a petition requesting a referendum from more than the required 10 percent of eligible producers of raspberries for processing and importers of processed raspberries. As such, a referendum was held from September 10 through October 5, 2018. The representative period for establishing voter eligibility was January 1 through December 31, 2017. Persons who grew 20,000 pounds or more of raspberries for processing in the United States or imported 20,000 pounds or more of processed raspberries into the United States during the representative period and were subject to assessment during the representative period were eligible to vote. Notice of the referendum was published in the Federal Register on July 25, 2018 (83 FR 35153). Termination of the Order was favored by 57 percent of the eligible producers and importers voting in the referendum.

Section 522 of the 1996 Act (7 U.S.C. 7421) and § 1208.72 of the Order provides that, if the Secretary determines that termination of the Order is favored by a majority of all the votes cast in a referendum, the Secretary shall terminate, as appropriate the collection of assessments under the Order not later than 180 days after the referendum results are announced. Further, the Secretary is required to terminate, as appropriate,

activities under the Order as soon as practicable and in an orderly manner. A separate rule will be published in the future in the Federal Register terminating the remaining Order requirements and provisions.

In accordance with section 1208.73, the Council will recommend not more than three of its members to the Secretary to serve as trustees for purposes of liquidating the assets of the Council.

According to section 1208.74, termination of the Order and any of its provisions, including the requirements to pay assessments shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of part 1208; or

(b) Release or extinguish any violation of part 1208; or

(c) Affect or impair any rights or remedies of the United States, or the Secretary, or any other person with respect to any such violation.

Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), AMS is required to examine the economic impact of this

rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than \$7.5 million.

According to the Council, it is estimated that there are 160 producers of raspberries for processing and 30 first handlers of raspberries for processing in the United States. Dividing the processed raspberry crop value for 2017 reported by the National Agricultural Statistics Service (NASS) of \$102,691,456¹ by the number of producers yields an annual average producer revenue of \$641,821. It is estimated that 75 percent of first handlers shipped under \$7.5 million worth of processed raspberries.

Likewise, based on U.S. Customs data, it is estimated there are 136 importers of processed raspberries. Using 2017 Customs

¹ Noncitrus Fruits and Nuts 2017 Summary, June 2018, USDA, National Agricultural Statistics Service, pg.83.

data, nearly all importers, or 99 percent, import less than \$7.5 million worth of processed raspberries annually. Thus, the majority of domestic producers, first handlers, and importers of processed raspberries would be considered small entities.

Regarding the value of the commodity, as mentioned above, based on 2017 NASS data, the value of the domestic crop was about \$102 million. According to U.S. Customs data, the value of 2017 imports was about \$55 million.

According to the Council, in 2017 there were 202 eligible producers and importers who paid about \$1.2 million in assessments. When the Order was published in the Federal Register on May 8, 2012, the U.S. Department of Agriculture (USDA) stated that an anticipated \$1.2 million of assessments would be collected from about 245 eligible entities. The assessment rate currently is one cent per pound of processed raspberries. This is the same rate that was set when the program first started. This rule terminates the requirement for eligible producers and importers to pay assessments.

The Order provides for reimbursements of assessments under certain conditions. Therefore, the exact economic impact of this action will take into account the amount of reimbursement of assessments producers and importers request from the Council.

This action will not impose any additional reporting or recordkeeping requirements on either large or small producers or importers of processed raspberries.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Order

It is therefore ordered, that the terms and provisions of Subpart A of part 1208 that require eligible producers and importers to pay an assessment to finance the national program for processed raspberry promotion, research, and information Order (7 CFR Part 1208) are hereby terminated.

It is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to putting this action into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action relieves each eligible producer and importer from the burden to remit assessments; (2) termination of the Order was favored by a majority of eligible producers and importers voting in the referendum; and (3) the 1996 Act and Order require that, upon such a determination by referendum,

collection of assessments should terminate no later than 180 days after the results are announced.

List of Subjects in 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer Information, Marketing agreements, Raspberry promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1208 is amended as follows:

PART 1208 – PROCESSED RASPBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A – Processed Raspberry Promotion, Research, and Information Order

1. The authority citation for 7 CFR Part 1208 continues to read as follows:

Authority: 7 U.S.C. 7411 – 7425 and 7 U.S.C. 7401.

2. A note is added to §1208.52 to read as follows:

§1208.52 Assessments.

* * * * *

Note 1 to §1208.52: The requirement to pay assessments is terminated as of [INSERT DATE ONE DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Dated: February 14, 2019.

Bruce Summers
Administrator

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